



FISCAL REQUIREMENTS AND OTHER PROGRAM RULES, REGULATIONS, LAWS AND POLICES FOR FEDERAL PROGRAMS

JULY 2016

This document pertains to the following Federal Grant Programs administered by NDDES:

- Emergency Management Performance Grant
- Hazardous Materials Emergency Performance Grant
- Homeland Security Grant Programs (SHSP, PSG)

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Introduction

This document represents the general fiscal requirements that are applicable to **all** sub-recipients receiving federal funds from the North Dakota Department of Emergency Services (NDDES). *When a subrecipient accepts federal funds, they assume responsibility for ensuring that federal program funds are expended and are accounted for in accordance with the Uniform Grant Guidance (UGG), agency program regulations, and terms of subrecipient agreements. It is the subrecipient's responsibility to know and comply with these requirements and to ensure that all program and fiscal staff responsible for administering the programs know what is contained in this document.* Adherence to the manual is certified by the subrecipient at the same time the application for federal funds is made and when the subrecipient signs the Notice of Grant Award. Since this document is not all-inclusive, the reader is encouraged to refer to specific program rules, regulations, laws, and policies. In such instances where state rules, regulations, laws, and policies are more restrictive than federal requirement, the state rules, regulations, laws, and policies apply.

Subrecipients will have program specific requirements which are addressed separately through the grant application process for the individual programs.

The legal citations included in this document are:

- **UGG** – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards <http://www.ecfr.gov> (2 CFR part 200)
- **CFR** – Code of Federal Regulations: the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government
- **NDCC** – North Dakota Century Code
- **OMB** – Office of Management and Budget

Definitions

Entity: A Governmental organization (a State, local government, or Indian Tribe) or a domestic nonprofit organization.

Indian Tribe (or “Federal recognized Indian Tribe”): Any Indian Tribe, band, nation, or other organized group or community that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. For purposes of subawards issued by NDDDES the Indian Tribes that are eligible are Spirit Lake Sioux Tribe, Standing Rock Sioux Tribe, Sisseton-Wahpeton Oyate Nation, Three Affiliated Tribes (Fort Berthold), Trenton Indian Service area, and Turtle Mountain Band of Chippewa.

Local government: County, City, Town, Local public authority, school district, council of governments, any other instrumentality of a local government (i.e., fire, law, etc.)

Nonprofit organization: Any corporation, trust, association, cooperative, or other organization that:

- Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- Is not organized primarily for profit; and
- Uses net proceeds to maintain, improve, or expand the operations of the organization.

Includes nonprofit Institutions of higher education, Hospitals, and Tribal organizations other than those included in the definition of “Indian Tribe.”

State: Any State of the United States or any agency or instrumentality of a State other than a local government or State-controlled institution of higher education.

Subaward: A legal instrument to provide support for the performance of any portion of the substantive project or program for which NDDDES received the Federal funds.

Subrecipient: An entity that receives a subaward from NDDDES and is accountable to NDDDES for the use of the Federal funds provided by the subaward.

General Provisions

Grant recipients assume responsibility for ensuring that federal program funds have been expended and accounted for consistent with program regulations, and approved applications. The subrecipient is responsible for the efficient and effective administration of the award through the application of sound management practices and assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the award.

Standards for Financial and Program Management (200.300-200.309)

Statutory and National Policy Requirements (200.300)

The sub-recipient is responsible for complying with all requirements of the Federal award. This includes requirements at 2 CFR part 25 Financial Assistance Use of Universal Identifier and System for Award Management.

The subrecipient shall comply with the most recent version of the Administrative Requirements of Title 2 Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Requirement for Unique Entity Identifier

No entity may receive a subaward from NDDes unless the entity has provided its unique entity identifier to NDDes.

No entity may make a subaward to an entity unless the entity has provided its unique entity identifier to NDDes.

For the purposes of federal awards issued by NDDes, this means that an entity must have or obtain prior to application both an Employer Identification Number (EIN) and a Dun and Bradstreet Universal Numbering System (DUNS) Number. The EIN base for an organization is the Internal Revenue Service (IRS) Tax ID number.

Employer Identification Number (EIN)

Organization applicants applying for an EIN should plan on a minimum of two full weeks to obtain an EIN. Contact the IRS helpline if you need assistance applying for an EIN. NDDes cannot assist applicants with questions related to obtaining a current EIN.

Dun and Bradstreet Data Universal Numbering System (DUNS) Number

Instructions for obtaining a DUNS number can be found at the following website:

<http://www.grants.gov/web/grants/applicants/organization-registration/step-1-obtain-duns-number.html>.

The applicant must provide a DUNS number with their application. Applicants should verify they have a DUNS number, or take the steps necessary to obtain one.

Applicants can receive a DUNS number at no cost by calling the DUNS number request line at (866) 705-5711. NDDes cannot assist applicants with questions related to obtaining a current DUNS number.

Statutory Requirements for Whistleblower Protections

- 10 U.S.C. 2409 – Contractor employees: protection from reprisal for disclosure of certain information
- 41 U.S.C. 4712 – Pilot program for enhancement of contractor protection for reprisal for disclosure of certain information
- 10 U.S.C. 2324 – Allowable costs under defense contracts (Not applicable to grant programs administered by NDDDES)
- 41 U.S.C. 4304 – Specific costs not allowable
- 41 U.S.C. 4310 – Proceeding costs not allowable

Financial Management Systems (200.302)

Subrecipients of federal funds must establish accounting procedures and records that are sufficient to permit preparation of required reports and permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

The financial management systems of subrecipients must meet the following standards:

- Ability to identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable:
 - The CFDA title and number
 - Federal award identification number (FAIN) and year
 - Name of the Federal agency
 - Name of the pass-through entity (NDDDES)

All of this information may be found on the Notice of Grant Award form issued by NDDDES to the subrecipient.

- Provide for accurate, current, and complete disclosure of the financial results of each Federal award or program.
 - Sub recipient must submit to NDDDES Financial Reimbursement Request Detail (SFN 54169) no less than annually, but preferably quarterly. (200.327)
 - Subrecipient must submit performance reports at the interval required by NDDDES to best inform improvements in program outcomes and productivity. To fulfill this requirements subrecipients must submit quarterly project status reports to NDDDES for each open subaward on January 15, April 15, July 15 and October 15. Project status reports can be found on the NDDDES website at <http://www.nd.gov/des/forms/>. (200.328)
- Records must identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation. (**Source documentation:** Cancelled checks, paid bills, payrolls, time and attendance records, subrecipient award documents, etc. that support accounting records.)

- Have effective control over, and accountability for, all funds, property, and other assets. The subrecipient must adequately safeguard all assets and assure that they are used solely for authorized purposes. See 200.303 Internal controls.
- Ability to compare expenditures with budget amounts for each Federal award.
- Have written procedures to implement the requirements of 200.305 *Payment*.
- Have written procedures for determining the allowability of costs in accordance with Subpart E – Cost Principles of this part and the terms and conditions of the Federal award.

Grant revenues, expenditures, etc. must be separately identified with codes and must not be comingled with other state, federal, or local funds.

Internal Controls (200.303)

The financial management system must also have adequate internal controls. Effective control and accountability must be maintained for all funds, property, and assets.

The subrecipient must have internal controls that:

- Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.
- Adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- Take prompt action when instances of noncompliance are identified in audit findings
- Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass through entity (NDDDES) designates as sensitive or the subrecipient considers sensitive, consistent with applicable federal, state, local and tribal laws regarding privacy and obligations of confidentiality.

Payment (200.305)

The Cash Management Improvement Act (CMIA) was created to prevent interest earnings on federal funds. For federal grant recipients, payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury to the State and ultimately the grant recipient. Therefore NDDDES makes payment to subrecipients on a reimbursement basis only.

NDDDES will make payment within 10 calendar days, but no later than 30 calendar days after receipt of the Reimbursement Request Detail (SFN 54169) provided that the request contains all of the required documentation. Failure to provide required documentation will delay payment.

Cost Sharing or Match (200.306)

Some federal programs require that grant funds be matched proportionately with non-federal funds or that the subrecipient participate to some extent in the cost of the project. Sources of costs used for cost sharing may be from allowable non-federal costs incurred by the subrecipient and/or the value of third-party in-kind contributions. Matching contributions, including cash and third party in-kind contributions

must be documented, allowable under the program guidance/regulations and cost principles, and properly valued.

All of the following criteria must be met:

- The contributions must be verifiable from the subrecipient's records;
- The contributions must not be included as contributions for any other Federal award;
- The contributions must be necessary and reasonable to accomplish the project or program objectives;
- The contributions must be allowable under Subpart E – Cost Principles of this part;
- The contributions are not paid by the Federal Government under another Federal award;
- The contributions are provided for in the approved budget when required by the Federal awarding agency; and
- The contributions conform to other provisions of this part, as applicable

The most common problem with third-party in-kind contributions is lack of documentation. Subrecipients should ensure that all in-kind contributions are documented through records that show how the valuation is determined. The quantity and allocability of volunteer services must be supported, to the extent feasible, by the same methods that the subrecipient uses for its own employees. For instance, if employees use a time clock, volunteers should do the same. Attendance at meetings by volunteers should be documented by signature records that substantiate the date and nature of the meeting and the amount of time spent at the meeting.

The rule for valuation of third-party contributions is “what it would have cost if the subrecipient had paid for the time or service itself.”

The cost match for each program administered by NDDDES is:

- EMPG: 50% cost match
- HMEP: 20% cost match
- OPSG: No cost match
- SHSP: No cost match

Program Income (200.307)

Subrecipients are encouraged to earn income to defray program costs where appropriate. Program income means gross income earned by the subrecipient that is directly generated by a supported activity or earned as a result of the federal award during the period of performance. Program income must be reported and shall be deducted from reimbursements.

Budget and Program Plan (200.308)

The approved budget for the federal award summarizes the financial aspects of the project or program as approved during the federal awarding process. Subrecipients must follow the approved budget and authorized activities when expending funds. If the subrecipient wishes to make changes to their budget or program plan, subrecipient must obtain prior approval from NDDDES. Prior approval on budget or program plan revisions are required for the following:

- Change in scope or objective of the project
- Change in key person specified in the application
- If more than 10% transfer is anticipated between budget items

- The need to extend the period of availability of funds
- New budget items that haven't been previously approved

All changes must be submitted to NDDes in writing (letter or email). If changes are approved, approval will be in writing (letter or email), and include an amended Notice of Grant Award document (if award amount changes) and amended budget. No approvals will be given verbally. If costs are incurred without prior written approval from NDDes, they may be disallowed and not reimbursed.

Period of Performance (200.309)

Each federal grant has a period for which funds can be obligated and expended. When a grant is awarded, it is important to note what the approved project period is and the time frames for which obligations may be incurred and liquidated. The subrecipient may charge to the award only allowable costs incurred during the period of performance.

Goods (ex. equipment, supplies) and services (ex. training, exercises) must be received and paid for during the period of performance. The final reimbursement request may not include unliquidated obligations. Expendable items (ex. supplies) for training, exercises, or planning activities must be consumed (used) during the period of performance.

Reimbursement may not be requested nor will it be made until the good or service has been received and paid for by the subrecipient. (Example: In May, The subrecipient pays for the registration and travel expenses for a course that does not take place until July. NDDes will not reimburse these expenses until after the subrecipient has attended the training.)

Property Standards (200.310-200.316)

Insurance Coverage (200.310)

The subrecipient must provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the subrecipient.

Equipment (200.313)

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost which equals or exceeds \$500.

Note: While the federal government maintains an acquisition cost of \$5,000 or more per unit for inventory management and control, state agency (NDDes) policy is more restrictive at the \$500 level, therefore, supersedes the federal government amount.

Acquisition cost is defined as the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment means the net invoice price of equipment including the cost of any modifications, attachments, accessories or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally acceptable accounting practices. Ancillary charges such as taxes, duty, protective-in-transit insurance, freight, and installation may be included or excluded in the acquisition cost in accordance with the subrecipient's regular accounting practices.

Title

Title to equipment acquired under a Federal award must vest in the subrecipient and must not be encumbered without approval of the Federal awarding agency or NDDES.

Use

Equipment must be used for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

Management

The subrecipient must have the appropriate procedures for managing equipment, whether acquired in whole or in part under a Federal award, until disposition takes place. At a minimum, the subrecipient must:

- Maintain all necessary property records which include –
 - Description of the property
 - Source of the funding, including the FAIN and percentage of Federal participation
 - Serial number or other identification number
 - Acquisition date
 - Cost of the property
 - Location of the property
 - Use and condition of the property
 - Disposition date (if applicable) and sale price of the property
- Take a physical inventory once every two years and that the results have been reconciled with property records. *Property tags must be placed on all equipment purchased with grant funding. Property tags for equipment purchased with federal funds administered by NDDES will be provided by NDDES upon closeout of the subrecipient's subaward.*
- Maintain a control system to ensure adequate safeguards to prevent against loss, damage, or theft.
- Develop adequate maintenance to keep the property in good condition.
- Have property sales procedures in place (in the event the equipment is sold) to ensure the highest possible return.

Further, NDDES requires that all radio equipment purchased with Federal funds must be P-25 compliant and programmed in accordance with the North Dakota Statewide Communications Interoperability Frequency Management Plan and the Signal Operating Instructions (SOI).

Disposition

Equipment acquired under a Federal award that is no longer needed for the original project or program may be disposed of as follows:

- Equipment with a current per unit fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency.
- Equipment with a current per unit fair market value in excess of \$5,000 may be retained by the subrecipient or sold. However, the Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the subrecipient to deduct or retain from the Federal

share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

- The subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.

When acquiring replacement equipment, the subrecipient may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

Intangible property (200.315)

Title to intangible property acquired under a Federal award vests upon acquisition in the subrecipient. The subrecipient must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency.

The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

The Federal Government has the right to:

- Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
- Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes

NDDDES also reserves these same rights.

Procurement Standards (200.318-200.326)

General Procurement Standards (200.318)

Procurement standards apply to the purchase of supplies, equipment, and other services funded in whole or in part by federal grant funds. These standards include:

- The subrecipient must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law
- Subrecipient must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- The subrecipient must maintain written standards of conduct covering conflict of interest and governing the actions of its employees engaging in the selection, award, and administration of contracts.
 - No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has real or apparent conflict of interest.
 - The officers, employees, and agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
 - If the subrecipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the subrecipient must also maintain written standards of conduct covering organizational conflicts of interest.
- The subrecipient's procedures must avoid acquisition of unnecessary or duplicative items.

- *The subrecipient is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.*
- *The subrecipient is encouraged to use Federal excess or surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.*
- The subrecipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. See also *200.213 Suspension and debarment.*
- The subrecipient must maintain records sufficient to detail the history of procurement. These records must include at a minimum:
 - Rationale for the method of procurement
 - Selection of contract type
 - Contractor selection and rejection
 - Basis for the contract price
- The subrecipient may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a subrecipient is the sum of actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. The subrecipient must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- The subrecipient alone must be responsible for and must have standards for the settlement of all contractual and administrative issues arising out of procurements.

Competition (200.319)

All procurement transactions must be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered.
- Any arbitrary action in the procurement process.

The subrecipient must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals.

The subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions must not contain features which unduly restrict competition. Detail product specifications should be avoided if at all possible.
- Identify all requirements which the offerors must fulfill and other factors to be used in evaluating bids or proposals.

The subrecipient must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the recipient must not preclude potential bidders from qualifying during the solicitation period.

Methods of Procurement to be followed (200.320)

The subrecipient must use one of the following methods of procurement or be more restrictive with their policies.

Micro Purchase Method.

Procurement by micro-purchase is the acquisition of supplies, services, or other property for which the aggregate dollar amount does not exceed \$3,500. To the extent practicable, the subrecipient must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations.

Note: Subrecipients whose written procurement procedures are more restrictive than the \$3,500 threshold must use their own more restrictive policy.

Note: Subrecipients whose written procurement procedures declare that they have adopted the State's procurement procedures and for State agencies, the micro-purchase threshold is \$2,500. Because the State's micro-purchase threshold is more restrictive, it must be used instead of the federal threshold. All state agency subrecipients must follow the State's more restrictive procurement procedures.

Small Purchase Procedures Method.

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost between \$3,500 and \$149,999.99. Price or rate quotations must be obtained from a minimum of three qualified sources.

Note: Subrecipients whose written procurement procedures are more restrictive must use their own more restrictive policy.

Note: Subrecipients whose written procurement procedures state that they have adopted the State's procurement procedures and for State agencies, the small purchase threshold is between \$2,500 and \$24,999.99. Because the State's small purchase threshold is more restrictive, it must be used instead of the federal threshold. All state agency subrecipients must follow the State's more restrictive procurement procedures.

For micro-purchases and small purchases, many state contracts are made available to other public schools (NDCC §15.1-09-34) and political subdivisions, tribal entities, and public transit authorities. Check the State Contract listing

<https://apps.nd.gov/csd/spo/services/bidder/listCurrentContracts.htm>) to find cooperative purchase contracts. The cooperative purchase contracts are marked with a **Y** under the CP column at the above site. When purchasing off of a State Cooperative Purchase contract, be sure to view the contract to see the list of eligible contractors and price lists. When contacting the contractor you will need to reference the State Contract Number.

Sealed Bids Method. (Formal Advertising)

Bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price. If this method is used the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.
- Any and all bids may be rejected if there is a sound documented reason.

Competitive Proposals Method.

The technique of competitive proposals is normally conducted with more than one source submitting an offer and either a fixed price or cost-reimbursed type of contract is awarded. If this method is used the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests to proposals must be considered to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified sources.
- The subrecipient entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Noncompetitive Proposals Method

This is the solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

Subrecipients must contact NDDDES for permission to use this method. Subrecipients who use this method without permission will not be reimbursed. Sufficient documentation will be required from the

subrecipient to support the need to use this method instead of one of the other three methods. NDDDES reserves the right to deny such requests.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (200.321)

Subrecipients must take all necessary affirmative steps to assure that minority, women, and labor surplus area firms are used when possible.

Procurement of recovered materials. (200.322)

Subrecipients that are an agency of a political subdivision (i.e. local government entity) and its contractors must comply with section 6002 of the Solid Waste Disposal Act. This guideline applies to items where the purchase price exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. Items are designated in *40 CFR part 247* and include:

- Paper and paper products (*40 CFR Part 247.10*)
- Vehicular products (*40 CFR Part 247.11*)
- Construction products (*40 CFR Part 247.12*)
- Transportation products (*40 CFR Part 247.13*)
- Park and recreation products (*40 CFR Part 247.14*)
- Landscaping products (*40 CFR Part 247.15*)
- Non-paper office products (*40 CFR Part 247.16*)
- Miscellaneous products (*40 CFR Part 247.17*)

Contract cost and price. (200.323)

The subrecipient must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.

The subrecipient must negotiate profit as a separate element of the price for each contract for which there is not price competition and in all cases where cost analysis is performed.

The cost plus percentage of cost and percentage of construction cost methods of contracting must not be used.

Contract provisions. (200.326)

The subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for subrecipient Contracts under Federal Awards.

- Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the subrecipient including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity: Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246 as amended by Executive Order 11375.

- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by subrecipients must include a provision for compliance with the Davis-Bacon Act as supplemented by Department of Labor regulations (29 CFR Part 5).
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the subrecipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- Rights to Inventions Made Under a Contract or Agreement (2 CFR Part 200 Appendix II (F))
- Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the subrecipient award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Act (33 U.S.C. 1251-1387), as amended.
- Debarment and Suspension (Executive Orders 12549 and 12689). (2 CFR Part 200 Appendix II (H))
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. (2 CFR Part 200 Appendix II (I))
- See §200.322 Procurement of recovered materials.

Subrecipient Monitoring and Management (200.330 – 200.332)

Requirements for pass-through entities. (200.331)

Subaward

The subrecipient's subaward document is the Notice of Grant Award. This document contains the following information:

- Federal Award Identification
 - Subrecipient Name
 - Unique entity identifier (DUNS Number)
 - Federal Award Identification Number (FAIN)
 - Federal Award Date to NDDDES
 - Subaward Period of Performance Start and End Date
 - Grant Amount
 - Project Description (Scope of Services)
 - Federal Awarding Agency
 - Pass-through Entity (NDDDES) and NDDDES Contact Information
 - CFDA Number and Name and Federal Award Amount to NDDDES
- Reporting Requirements
- Special Conditions
- Other Requirements, Terms and Conditions

Subrecipients must permit NDDDES and auditors access to the subrecipient's records and financial statements as necessary.

Subrecipient Risk

A risk assessment for all federal grant subrecipients is performed with each new grant and for formula grants at a minimum annually, during the grant award process. Risk factors include, but are not limited to:

- Prior Experience/Performance
- Audit Findings
- New Personnel
- Prior Monitoring Findings
- Late Reporting
- Data Submission Errors
- Grant Award Amount
- Lapsed Funds

The risk assessment is performed by NDDDES staff. If a grant recipient is found to be High Risk, the grant may have additional conditions (200.207) including, but not limited to:

- Requiring additional program compliance monitoring
- Establishing additional prior approvals (ex. prior approval on expenditures)

If a grant recipient is deemed moderate to high risk, they will be notified with the grant award of any special conditions placed upon the award and what type of action is required to remove the special condition and the time period for improving the risk level of the entity.

Special Conditions

The subrecipient shall meet all applicable special conditions as specified in the Grant Award.

Additional specific award conditions may be imposed, as needed (200.207).

Monitoring of subrecipient activities

NDDDES will monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.

- NDDDES will review financial reimbursement requests and quarterly project status reports. See second bullet under Financial Management Systems (200.302) above.
- Perform on-site monitoring reviews at least once every three years.
- Subrecipient must correct any deficiencies pertaining to a Federal award that are detected through audits, on-site reviews, and other means. Corrections and notification to NDDDES of the corrections that were made must be done within 30 days of notification of deficiencies.
- Subrecipients must notify NDDDES of any audit findings pertaining to a Federal award administered by NDDDES within 30 days of notice to the subrecipient by the audit team.
- NDDDES will issue a management decision to the subrecipient for audit findings pertaining to the Federal award within 30 days of notification.

Audits

A subrecipient that expends \$750,000 or more in federal funds during the subrecipient's fiscal year must have a single or program-specific audit conducted for that year. (2 CFR Part 200 Subpart F – Audit Requirements (200.501-200.512))

The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits and must be completed within nine (9) months of your fiscal year end. If there are findings a copy of the audit report must be provided to NDDes except in those cases where the audit report has already been provided to the State Auditor's Office.

In the first quarter of each year NDDes will send a letter to subrecipients that received federal funds from NDDes during the previous calendar year asking the subrecipient to certify if they are required to have a single or program-specific audit.

Record Retention and Access (200.333 – 200.337)

Retention requirements for records. (200.333)

Financial records, supporting documents, statistical records, and all other subrecipient records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report as reported to the Federal awarding agency. NDDes will inform the subrecipient by mail of the timeframe for which records must be retained.

Exceptions

Record retention requirements may be extended for the following reasons:

- If any litigation, claim, or audit is started before the expirations of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- When the subrecipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or NDDes to extend the retention period.

Equipment

Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.

Methods for collection, transmission, and storage of information (200.335)

Whenever practicable, subrecipients are encouraged to collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper.

Access to Records (200.336)

The Federal awarding agency, Inspectors General, and Comptroller General of the United States, and NDDes, or any of their authorized representatives, have the right of access to any documents, papers, or other records of the subrecipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents.

Restrictions on public access to records (200.337)

Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection (Freedom of Information Act (5 U.S.C. 552) (FOIA)) and N.D.C.C. 44-04.

Personally identifiable information (PII) is exempt.

Remedies for Non-Compliance (200.338 – 200.342)

Remedies for noncompliance. (200.338)

If the Federal awarding agency or NDDDES determines that noncompliance cannot be remedied by imposing additional conditions (200.227), the Federal awarding agency or NDDDES may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily withhold cash payments pending correction of the deficiency by the subrecipient.
- Disallow (deny) both use of funds and any applicable credit for all or part of the cost of the activity or action not in compliance.
- Wholly or in part suspend or terminate the Federal award.
- Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and the Federal awarding agency regulations.
- Withhold further Federal awards for the project or program.
- Take other remedies that may be legally available.

Termination (200.339)

The subrecipient's award may be terminated by the Federal awarding agency or NDDDES in whole or in part as follows:

- If the subrecipient fails to comply with the terms and conditions of the award;
- For cause;
- With the consent of the subrecipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

The subrecipient may also terminate the award by sending to NDDDES written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.

In the case of termination, payments to the subrecipient or recovery of funds from the subrecipient shall be in accordance with the legal rights and liabilities of both parties.

Notification of termination requirement (200.340)

NDDDES will provide the subrecipient a notice of termination either by email or by letter specifying the date of such termination.

Closeout (200.343)

NDDES will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the subrecipient.

- The subrecipient must submit, no later than 15 days after the end date of the period of performance, all financial, performance (project status), and tangible personal property reports. NDDES may approve extensions when requested by the subrecipient for up to another 15 days.
- Subrecipient must liquidate all obligations incurred under the Federal award not later than the end date of the period of performance.

Post-Closeout Adjustments and Continuing Responsibilities (200.344)

The closeout of a Federal award does not affect any of the following:

- The right of the Federal awarding agency or NDDES to disallow costs and recover funds on the basis of a later audit or other review.
- The obligation of the subrecipient to return any funds due as a result of later refunds, corrections, or other transactions.
- Audit requirements in 2 CFR Part 200 Subpart F – Audit Requirements.
- Property management and disposition requirements and Records retention requirements in 2 CFR Part 200 Subpart D – Post Award Requirements.

Collection of Amounts Due (200.345)

Any funds paid to the subrecipient in excess of the amount to which the subrecipient is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. The subrecipient must return the excess funds to NDDES within 70 calendar days after demand. The Federal Government will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999).

Additional Miscellaneous Items

Debarred or Suspended Entities (200.213)

Subrecipients and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Order 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs and activities. Subrecipients must go to www.sam.gov or <http://exclusions.oig.hhs.gov/> to verify the status of contractors/vendors with the federal government.

In addition, Subrecipients may not make any award or contract to any party which is debarred, suspended from doing business in North Dakota. See <https://www.nd.gov/omb/agency/procurement/bidders-list/suspended-and-debarred-bidders> for the list of vendors debarred or suspended in North Dakota.

Factors affecting allowability of costs. (200.403)

In order for expenditures to be allowable under a federal award, costs must meet the following general criteria:

- Be necessary (*See 2 CFR 20.405*) and reasonable (*See 2 CFR 200.404*) for the performance of the Federal award and be allocable thereto under 2 CFR Part 200 Subpart E.
- Conform to any limitations or exclusions set forth in 2 CFR Part 200 Subpart E, or in the award as to types or amounts of cost items.
- Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the subrecipient.
- Be accorded consistent treatment. Consequently, a cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a federal award as an indirect cost.
- Be determined in accordance with generally accepted accounting principles appropriate to the circumstances.
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federal activity in either the current or a prior period.
- Be adequately documented.

Direct Costs (200.413)

Direct costs are those costs that can be identified specifically with a particular final objective or activity. Typical costs charged directly to a federal program may include salaries, fringe benefits, purchases services, supplies, travel, and equipment to be used to benefit the specific federal program.

Indirect Costs (200.414)

Indirect costs are those costs which are not readily identified with the activities funded by the federal grant or contract but are nevertheless incurred for the joint benefit of those activities and other activities and programs and the subrecipient. See 2 CFR Part 200 Appendix III, IV, V, VII, or IX, as applicable, for the requirements for development and submission of indirect cost rate proposals and cost allocation plans. Indirect costs are considered part of the M&A budget line item. Generally NDDDES only allows M&A costs under the EMPG program.

Compensation – personal services. (200.430)

General

Compensation for personal services includes remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits (2 CFR 200.431). Costs of compensation are allowable to the extent that the total compensation for individual employees:

- Is reasonable for the services rendered and conforms to the established written policy of the subrecipient consistently applied to both Federal and non-Federal activities;
- Is determined and supported by appropriate documentation.

For a subrecipient where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records.

Documentation of Personnel – Time and Effort Reporting

Charges to Federal awards for salaries and wages must be based on payroll records that accurately reflect the work performed (time and effort spent) on the program. Records are required for all employees that are paid with federal funds to document the actual time spent working in the program.

- Charges for employee salaries and wages must be based on payrolls documented in accordance with generally accepted practices of government unit and approved by an official of that unit.
- Charges for salaries and wages for all employees who work only one program or cost objective must be supported by yearly certifications signed by each employee that 100% of their time was spent on that program.
- Charges for salaries and wages for all employees who work on more than one program or cost objective must be supported by personnel activity reports or equivalent documentation (that shows the distribution of employee's time among the programs which the employee works. The documentation must:
 - Reflect an after-the-fact distribution of the actual activity of each employee;
 - Account for the total activity for which the employee is compensated;
 - Be prepared at least monthly and coincide with one or more pay periods; and
 - Be signed by each employee.

Salaries and wages of employees used in meeting cost share or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

Subrecipients requesting reimbursement for salaries and wages must provide a copy of their signed timesheet(s) to NDDDES.

Standards for Documentation of Personnel Expenses

Records are required for all employees that are paid with federal funds to document the time and effort they spend within the program. The portion of the federally paid salary should be reflective of the actual activity, not budgeted, the individual has put forth for that federal program. Time and effort reporting is required when any part of an individual's salary is charged to a federal program or used as match for a federal program.

Records must:

- Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
- Be incorporated into the official records of the subrecipient;
- Reasonably reflect the total activity for which the employee is compensated by the subrecipient, not exceeding 100% of compensated activities;
- Encompass both federal assisted and all other activities compensated by the subrecipient on an integrated basis, but may include the use of subsidiary records as defined in the subrecipient's written policy.

- Comply with the established accounting policies and practices of the subrecipient.
- Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity;
- Budget estimates (estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards.

Stipends

Stipends may be paid to volunteer's to participate in federally funded training, exercise, or planning activities. The maximum stipend reimbursement rate is \$19.00/hour. The time the volunteer spends on the activity must be documented with a sign-in/out sheet for the activity that includes the name of the activity, and the date(s) of the activity, and time the volunteer spent at the activity.

Example:

Brown County Hazardous Materials Exercise

June 24, 2019

<u>Name</u>	<u>Time In</u>	<u>Time Out</u>
<i>John Doe</i>	<i>3:00</i>	<i>4:15</i>

Lobbying (200.450)

Federal funds cannot be used for partisan political purposes of any kind including advocacy by any person or organization in the administration of federally assisted programs.

Travel costs (200.474)

Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the subrecipient.

NDDes Policy for Travel/Per Diem Reimbursement

In order to request reimbursed for travel costs, the travel must be for an eligible, pre-approved planning, training, or exercise activity associated with the Federal grant program. Travel Policy rates for lodging, mileage, and per diem will always default to the North Dakota Office of Management and Budget published rates.

Allowable Expenses

Transportation

- Mileage: Mileage will be reimbursed at a rate not to exceed the Privately Owned Vehicle (POV) Mileage Reimbursement Rate established by the U.S. General Services Administration (GSA) for an automobile if not a Government Owned Vehicle. Travel must exceed \$10.00 or 17.85 miles round trip outside city of employment to the planning, training, or exercise event for mileage to be eligible for reimbursement. Mileage within city of employment is not eligible for reimbursement.
- Fuel: Fuel consumed during an exercise event for a vehicle used as part of the exercise may be reimbursed. Actual receipts and beginning and end odometer readings must be provided. Fuel may only be claimed for exercise events.

- **Air Travel:** Individual may be reimbursed for actual airfare paid for travel to a planning, training, or exercise event approved by NDDES. Proper supporting documentation must be attached to the travel voucher as a receipt, including boarding passes as proof of travel. Reimbursement will not be made prior to travel actually occurring. Reimbursement will not be made in the event the individual does not travel. Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable.
- **Car Rental for Out-of-State Travel:** Car rental will only be reimbursed if it is required to reach the planning, training, or exercise event (i.e., no shuttle or other means of transportation that is cheaper is available from the airport to the event destination). Contracts that include insurance and damage waiver as part of the base rental rate must be used. Proper supporting documentation must be attached to the travel voucher. Extra/Additional insurance will not be reimbursed.

Lodging

- **In-State:** Maximum of 90% of the GSA rate for lodging in North Dakota plus applicable state and local taxes. The GSA will update their rates periodically during the biennium and the allowable lodging reimbursement will also change at that time. Maximum of 90%, plus applicable state and local taxes) of the GSA established city/county rate exceptions for the following locations apply:
 - 1. Dickinson/Beulah (Stark, Mercer, Billings)
 - 2. Minot (Ward)
 - 3. Williston (Williams, Mountrail, McKenzie)
- **Out-of-State:** Actual lodging expense.

Note: Receipts from a bona fide lodging establishment must be provided.

Note: Participants must travel a distance greater than 50 miles to be eligible for reimbursement for lodging.

Meals

The expense allowance (per diem rate) for each quarter of any 24-hour period effective, August 1, 2013, is as follows:

<u>Meal Allowance</u>	<u>In-State</u>	<u>Out-of-State</u>
• First quarter, 6 a.m. to 12 noon	\$7.00	20% of GSA M&IE rate
• Second quarter, 12 noon to 6 p.m.	\$10.50	30% of GSA M&IE rate
• Third quarter, 6 p.m. to 12 midnight	\$17.50	50% of GSA M&IE rate

Travel for the first quarter must begin before 6:00 a.m. in order to claim expenses. In order to claim expenses for the second and third quarters, travel must begin one hour before the start of the quarter being claimed, and the travel status must extend at least one hour into the quarter being claimed.

Planning, Training and Exercise events must be a minimum of four hours for the meal allowance to be eligible. Only individuals that travel from out of town to the subrecipients planning, training, or exercise event are eligible for meal reimbursement, and must meet the travel requirements above. Individuals that live within the town where the event is held are not eligible for reimbursement.

For state agency subrecipients, travel status must exceed four hours before any reimbursement for meals can be made.

If meals are included as part of a registration fee for a conference, seminar, or other meeting, the individual may not claim the applicable meal allowance for that quarter.

Effective **August 1, 2015**, food purchased by a subrecipient in lieu of providing the per diem rate will not be reimbursed. Individuals attending training must be reimbursed based on the policy above in order for subrecipient to claim reimbursement.

Note: If an individual is claiming reimbursement for meals for travel when no overnight stay is involved, the meal reimbursement is taxable (IRS Publication 463).

Note: Travel for instructors or facilitators of planning, training, or exercise events are subject to this same policy.

Unallowable Expenses

Unallowable Expenses include, but are not limited to, the following:

- Refreshments/Break-time snacks
 - Coffee, soft drinks, water, donuts, muffins, rolls, cookies, etc. are not eligible for reimbursement and with federal grant dollars administered by NDDDES.
 - Alcoholic beverages
- Transportation: Mileage for Government Owned Vehicle, Parking tickets or other traffic tickets
- Lodging: Late check-out charges or room damage charges
- Entertainment
- Laundry

Internal Control & Fraudulent/Significant Dishonest Acts

Entities accepting federal funding from NDDDES must ensure internal controls are in place to ensure fraudulent travel/per diem reimbursement claims are not submitted.

Supplanting

Subrecipients may use federal funds only to supplement. Subrecipients may not use federal program funds to supplant (take the place of) funds from non-federal sources.

Supplanting is presumed to occur in the following instances:

- The subrecipient uses federal funds to provide services that it is required to make available under other federal, state, or local laws;
- The subrecipient uses federal funds to provide services that were provided with non-federal funds in the prior year.
- The subrecipient uses federal funds to procure goods or services that were already provided for in the subrecipient's current budget.

Notice of Funding Opportunities (NOFO)

NDDDES will provide notices of funding opportunities at www.nd.gov/des/homeland/grants/info. The NOFO will contain the following:

- Program Description
- Amount of Funding Available
- Eligibility Information
- Application and Submission Information
- Application Review Information
- Award Administration Information
- NDDDES Contact Information
- Other Information

Eligibility Information

NOFO will state whether there is required cost sharing, matching, or cost participation requirements.

Application Review Information

Applications submitted by eligible applicants will reviewed as follows:

EMPG applications will be reviewed to ensure requirements listed in the NOFO are addressed. Funds will be allocated based on a formula. The formula is reviewed yearly to update information such as population.

HSGP applications will be reviewed to ensure adherence to eligibility criteria set by the U.S. Department of Homeland Security in the federal NOFO and to determine if application meets the priorities set by the DESAC (designated State Administrative Committee or SAC). Applications for regional response team projects will be reviewed by the Policy Network. Policy Network will make recommendations to NDDDES on the allocation of funds for regional teams.

HMEP applications will be reviewed to determine eligibility based criteria set by the U.S. Department of Transportation in the NOFO.

Funding allocations for all federal grant programs is at the discretion of the North Dakota Department of Emergency Services, Division of Homeland Security.

OPSG applications (Operations Orders and Budget Template) must be coordinated with and will be reviewed by the U.S. Border Patrol.

Federal Award Administration Information

Applicants for HSGP or HEMP funds will receive a letter from NDDDES stating that their application was selected for funding or partial funding and state if applicant needs to submit Environmental and Historical Preservation (EHP) review paperwork. The letter will state that the actual award document (Notice of Grant Award) will be issued at a later date once NDDDES receives the federal grant award and that the subrecipient is not to start the project until they receive the actual award document. The letter will also state that projects started prior to subrecipient receiving the actual award document and/or approval of EHP will result in the allocation/award being null and void.

Upon receipt of federal award, NDDDES will submit EHP documents for review and approval by the federal awarding agency. NDDDES will issue the award documents (Notice of Grant Award – See 2 CFR

Part 200.331) to the subrecipients along with a budget, requirements, and special conditions within 45 days of receipt of federal award. If the EHP has not been approved within the 45 day timeframe, the award letter will state that the subrecipient is not to start the project until they receive notice that the EHP has been approved and that projects started prior to EHP approval will result in loss of funding.

Applicants for EMPG funds will receive the Notice of Grant Award within 45 days of receipt of federal award as long as they have submitted all required paperwork.

Other

Merger and Modification

The Grant Award constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified in the Grant Award. The Grant Award may be amended pursuant to any special conditions listed in the Grant Award, or by written agreement signed by both parties.

Authority to Contract

The subrecipient shall not have authority to contract for or on behalf of, or incur obligations on behalf of the NDDES.

Subcontract

Any subcontracts issued by the subrecipient shall contain at a minimum the same requirements as included in the subrecipient's Grant Award, including any special conditions and the requirements of this document. Subrecipients may not assign or otherwise transfer or delegate any right or duty without express written consent from NDDES.

Indemnity

NDDES and the subrecipient each agrees to assume its own liability for any and all claims of any nature including all costs, expenses, and attorneys' fees which may in any manner result from or arise out of the Grant Award.

Independent Subrecipient

The subrecipient in performing the duties under the Grant Award is functioning as an independent Grantee and the arrangements between NDDES and the subrecipient hereto in no way shall be construed as giving rise to an employer/employee relationship.

Applicable Law

The Grant Award shall be governed by and construed in accordance with the laws of the United States to the extent that they apply and otherwise by the laws of the State of North Dakota. Any dispute resulting in an action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

Severability

If any term of the Grant Award is declared to be illegal or unenforceable by a court having jurisdiction, the validity of the remaining terms shall not be affected.

Notices

All notices or other communication required under the Grant Award shall be given by mail or by email to the contact named by the subrecipient in their initial application.

Civil Rights

Subrecipients shall comply with Title VI of the Civil Rights Acts of 1964, Executive Order 11246 and Executive Order 11375. In accordance with the aforementioned act, no person shall, on the grounds of race, color, national origin, age, handicap, sex, or religion be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds.

Energy Efficiency

Subrecipients must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

Drug Free

By signing the Notice Grant Award the subrecipient is certifying, in accordance with 45 CFR Part 76 Appendix C, that it will provide a drug-free workplace, or in case of an individual, certify that his or her conduct of grant activity will be drug-free.

Implementing Environmental Planning and Historic Preservation Activities

Subrecipients proposing projects that involve changes to the natural or built environment, including, but not limited to, construction of communication towers; modification or renovation of existing buildings, structures, facilities, and infrastructure; or that involve new construction, including replacement or relocation of facilities, must participate in the EHP review process. The EHP review process involves submission of a detailed project description, the proposed project's purpose and need, and supporting documentation to GPD for evaluation to determine if the proposed project may impact environmental resources and/or historic properties.

Costs incurred to comply with FEMA's EHP requirements are the responsibility of the subrecipient. This includes costs associated with the preparation, collection, or assembly of the necessary documentation, the submission of the EHP clearance form, and/or the consultation fees for the development of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Subrecipients may use grant funds or the recipient's own funds for these costs. FEMA will not amend grant awards to provide additional funds to cover these costs.

Training and Exercise Plan (TEP) Requirement

Subrecipients requesting funds for training and exercise activities, must have a (or be included in the county or tribal) three-year training and exercise plan that has been approved by NDDDES. The activities proposed by the subrecipient must be reflected in the TEP.

National Incident Management System (NIMS) Compliance

All subrecipients requesting federal funding must certify through during the application process that they are NIMS Compliant. This means that the subrecipient is familiar with and utilizes NIMS during incident response activities and has ensured that staff have taken the following courses:

- IS-100 *Introduction to the Incident Command System*
- IS-200 *ICS for Single Resources and Initial Action Incidents*
- IS-700 *National Incident Management System, An Introduction*

- *IS-800 National Response Framework, An Introduction*

Emergency Management Assistance Compact (EMAC)

North Dakota is a member of EMAC. Therefore, all assets supported in part or entirely with federal funds must, where applicable, be readily deployable to support emergency or disaster operations per existing EMAC agreements. The assets include those purchased by subrecipients with federal funding.